

23.08.2021

Court No.28
Item No.10
(Allowed)

Akd
&
Sb

CRM 3013 of 2021
(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with S.T. No. 6 (2) 2021/S.C. no. 1 (10) 2020 arising out of Panchasayar Police Station Case No. 20 of 2020 dated 17.03.2020 under Sections 120B/302/324/34/212 of the Indian Penal Code;

And

In the matter of : **Sk. Moinuddin @ Babu**
...Petitioner

Ms. Minoti Gomes,
Mr. Kailash Tamoli.

...For the Petitioner

Mr. Madhusudan Sur,
Mr. Monoranjana Mahata.

...For the State.

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure after being arrested in connection with S.T. No. 6 (2) 2021/S.C. no. 1 (10) 2020 arising out of Panchasayar Police Station Case No. 20 of 2020 under Sections 120B/302/324/34/212 of the Indian Penal Code.

Learned Counsel for the petitioner submits that the petitioner is languishing in jail for about 464 days in connection with the instant case, when his role is not attributable to the commission of offence. It is further submitted that the charge sheet has already been submitted and no further custody is required.

The State vehemently opposes the prayer for bail. It is submitted that the petitioner stands on the same footing that of another co-accused, namely Santu Chatterjee, whose bail application was rejected by this Court on 1st June, 2021.

We have perused the materials available in the case diary including the statement of the approver recorded under Section 164 of the Code of Criminal Procedure. There is no whisper in his statement, which may directly link the petitioner in committing the offence. Specific role of Santu Chatterjee is evident from the statement of the approver and, therefore, we do not find any difficulty in rejection of the application for bail filed by him.

However our attention is drawn to the statement of one of the witnesses recorded under Section 161 of the Code of Criminal Procedure disclosing the name of the petitioner.

After meticulously examining such statement we do not find any active role of the petitioner nor he inflicted any blow on the deceased, which led to the death. Though the petitioner has been identified in the Test Identification parade, but no specific role has been disclosed in any of the statements of the witnesses.

We thus find that it is a fit case where further custody of the petitioner is not required.

We thus allow the prayer for bail.

Accordingly, the petitioner, **Sk. Moinuddin @ Babu**, shall be released on bail upon furnishing a bond of Rs.10,000 /- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Alipore, subject to the condition that the petitioner shall make himself available on each day of listing of the matter before the Court and on further condition that he shall meet the Officer-in-Charge of the concerned police station within a week from date and the petitioner shall not tamper with evidence collected by the Investigating Officer and intimidate any witness.

In default of any condition as aforesaid, the Trial Court shall be at liberty to disentitle him to the privilege of bail granted by this Court without further reference to this Court.

The application for bail, being CRM 3013 of 2021, is thus **disposed of.**

For abundant precaution it is hereby made clear that the findings recorded hereinabove are tentative in nature and restricted to an application under Section 439 of the Code of Criminal Procedure and shall not have any persuasive effect at the time of trial.

(Harish Tandon, J)

(Bibek Chaudhuri, J.)

